

City of Lincoln
TRANSPORTATION BENEFIT PLAN

Effective: November 1, 2005

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ADOPTION OF PROGRAM

ARTICLE I

INTRODUCTION

1.01 Establishment of Plan

Effective November 1, 2005, City of Lincoln, (the “Employer”) establishes, pursuant to this document, the “City of Lincoln Transportation Benefit Plan” (Program).

The purpose of this Program is to provide tax-free transportation benefits in lieu of otherwise taxable compensation. It is intended that this Program comply with the requirements of Internal Revenue Code § 132(f).

ARTICLE II

DEFINITIONS

2.01 Definitions

The terms used in this Program shall have the meanings set forth in this Article unless the context in which they are used clearly indicates that some other meaning is intended.

“Affiliate” means any entity that is a member of a group that includes City of Lincoln and is defined in Code § 414(b), (c), (m) or (o).

“Anniversary Date” means the first day of any Program Year.

“Commuter Highway Vehicle” means any highway vehicle:

- (1) which has a seating capacity of at least six adults (not including the driver), and
- (2) of which at least 80% of the mileage use is reasonably expected to be used:
 - (a) for purposes of transporting Employees in connection with travel between their residences and their places of Employment, and
 - (b) on trips during which places the number of Employees transported for such purposes is, on average, at least half of the adult seating capacity of such vehicle (not including the driver).

“Commuter Highway Vehicle (Van Pool) Expenses” means expenses incurred for transportation in a “commuter highway vehicle” if such transportation is in connection with travel between the Employee’s residence and place of Employment.

“Code” means the Internal Revenue of 1986, as amended from time to time.

“Compensation” means the cash wages or salary paid to an Employee by the Employer.

“Coverage Period” means the monthly, quarterly, semi-annual, annual, or other period, designated on the Salary Reduction Agreement during which a Salary Reduction Agreement is in effect and irrevocable.

“Effective Date” means November 1, 2005.

“Eligible Employee” means all Employees who meet the eligibility requirements set forth in Article III.

“Eligible Transportation Expenses” means those qualified expenses incurred by the Employee to purchase or pay for Transit Pass Expenses, Commuter Vehicle Expenses or Qualified Parking Expenses incurred for purposes of transportation between an Employee’s residence and place of Employment.

“Employee” means an individual that the Employer classifies as a common-law employee, but does not include:

- (1) any leased employee (including, but not limited to, those individuals defined in Code § 141(n),
 - (2) any individual classified by the Employer as a contract worker, independent contractor, temporary employee or casual employee, whether or not any such persons are on the employer’s W-2 payroll or are later classified as common-law employees by a government agency or pursuant to a court action or other legal proceeding (including any settlement or judgment related thereto),
- or
- (3) any employee covered under a collective bargaining agreement.

“Employer” means City of Lincoln and any Affiliate that has adopted this Program pursuant to Section 7.03.

“Employment” means the performance of services by an Employee for the Employer.

“Program” means the City of Lincoln Transportation Benefit Plan as set forth in its entirety in this document as may be amended from time to time.

“Program Year” means the 12-month period beginning November 1 and ending October 31 provided, however, that a period of less than 12 months may be a Program Year for the initial and final Program Year, and a transition period to a different Program Year.

“Qualified Parking Expenses” means the following parking expenses, unless such expenses are incurred for any parking on or near property used by the Employee for residential purposes:

- (1) expenses incurred by an Employee to park his or her car on or near the business premises of the Employer; or
- (2) expenses incurred by an Employee to park his or her car on or near a location from which the Employee commutes to work:
 - by mass transit facilities, whether or not publicly owned;
 - by using the services of any person in the business of transporting persons for compensation or hire, if such transportation is provided in a “commuter highway vehicle,” as defined in this Program;
 - by Commuter Highway Vehicle; or
 - by carpool (i.e., two or more individuals who commute together in a motor vehicle on a regular basis)

“Salary Reduction Agreement” means the actual or deemed agreement pursuant to which an Eligible Employee enrolls in the Program in accordance with Article IV.

“Transit Pass Expense” means expenses incurred for any pass, token, farecard, voucher, or similar item entitling a person to transportation (or transportation at a reduced price) if such transportation is:

- provided by any mass transit facilities, whether or not publicly owned:

or

- provided by any person in the business of transporting persons for compensation or hire if such transportation is provided in a vehicle with a seating capacity of at least six adults (excluding the driver).

ARTICLE III

ELIGIBILITY

3.01 Eligibility

Employees who complete any applicable waiting period established by the Employer shall be eligible to participate in the Program on the first Coverage Period following such eligibility.

3.02 Rehire

If an Employee terminates his or her Employment for any reason including (but not limited to) disability, retirement, layoff, discharge, or voluntary resignation, and then is rehired, the Employee must complete any applicable waiting period established by the Employer before again becoming eligible to participate in the Program.

ARTICLE IV

BENEFITS AND ELECTIONS

4.01 Election of Benefits

Eligible Employees may enter into a Salary Reduction Agreement with the Employer whereby the Employee agrees to reduce his or her unearned compensation by the amount of his or her anticipated future Eligible Transportation Expenses for the upcoming Coverage Period. The amount elected for reduction will be divided by the remaining payroll periods in the Coverage Period. The resulting per payroll period reduction amount will be deducted on a pre-tax basis from the Employee's Compensation per payroll period until such time as the Employee changes his or her election for an upcoming Coverage Period

4.02 Account(s)

The Employer will create and maintain a bookkeeping account on behalf of each Employee who enters into a Salary Reduction Agreement, which account will reflect the accumulated amount of Compensation that has been deducted on a pre-tax basis from the Employee's Compensation. When cash reimbursement is made to the Employee for his or her Eligible Transportation Expenses, the balance of said account will be reduced by the amount of the reimbursement. The amount of any reimbursement shall not exceed the accumulated amount in said account at the time of the reimbursement, nor any of the following monthly limitations:

(a) **Monthly Limitation for Qualified Parking Expenses:** Reimbursement for Qualified Parking Expenses will not exceed the monthly value as set forth in Code § 132(f), as adjusted for inflation. For 2005, the limitation on such value is \$200 per month (as indexed);

(b) **Monthly Limitation for Transit Pass Expenses and Commuter Highway Vehicle Expenses:**

Reimbursements for combined expenses for Transit Pass Expenses and Commuter Highway Vehicle Expenses will not exceed the monthly value as set forth in Code § 132(f), as adjusted for inflation. For 2005, the limitation on such value is \$105 per month (as indexed); and

(c) **Special Rules for Transit Passes:** A cash reimbursement may not be provided for an employee's mass transit expenses if a voucher (or similar item that may be exchanged only for a transit pass) is readily available to the Employer for direct distribution to Employees. A voucher (or similar item) is readily available if:

- (1) the Employer can obtain the voucher on terms that are no less favorable than the terms available to an Employee directly, and
- (2) the Employer does not incur a significant administrative cost in obtaining the voucher. An administrative cost will be determined to be "significant" if the Program Administrator (in its sole discretion) determines that the average administrative cost incurred by the Employer (excluding delivery charges of \$15 or less) is more than one percent (1%) of the average monthly value of the voucher for a particular transit system (i.e., train, bus, subway, etc.)

4.03 Time Period for a Salary Reduction Agreement.

A Salary Reduction Agreement must be made before the earlier of:

- (1) the Coverage Period to which it relates;
and
- (2) the receipt of Eligible Transportation Expense benefits to which it relates. Such election shall be effective for the first pay period after the Employer processes the change. Once a Salary Reduction Agreement is made, it cannot be changed during the Coverage Period to which it relates. Salary Reduction Agreements may only be changed for future Coverage Periods.

4.04 Forfeiture of Account/Carry-over Provision

Any amount in the Employee's account that has not been used to reimburse the Employee for Eligible Transportation Expenses incurred prior to the end of the Coverage Period to which the Employee's Salary Reduction Agreement applies will not be forfeited. These amounts will be carried over to reimburse for eligible expenses incurred or paid during a subsequent Coverage Period for as long as the Employee continues to participate in the Program.

4.05 Termination of Employment/Participation-Forfeiture of Account

The Employee's Salary Reduction Agreement shall terminate upon the earlier of:

- (1) termination of Employment;
- (2) the date the Employee ceases to be an Eligible Employee; or
- (3) the date the Employee revokes his or her Salary Reduction Agreement for the next Coverage Period as permitted under Section 4.03.

Amounts remaining in the Employee's account after all eligible reimbursements have been made will be forfeited.

4.06 Substantiation

The Employee may request reimbursement for Eligible Transportation Expenses by submitting in the manner and form approved by the Employer a record of the expenses incurred. The Employee shall provide information showing that any Eligible Transportation Expense was in fact incurred by the Employee. The Employee generally must certify in writing the amount paid and the date of the expenses for which reimbursement is requested, as well as submit evidence of such payment (parking receipt, used transit pass, etc.) The information submitted by the Employee may vary depending on the facts and circumstances surrounding the expenses, including the method of payment and the particular transportation method used by the Employee.

4.07 Reimbursement of Expenses

The Employer will provide reimbursement of substantiated Eligible Transportation Expenses on an administratively convenient periodic basis and will debit the Employee's Account accordingly.

ARTICLE V

ADMINISTRATION

5.01 Program Administrator

The Program Administrator of the Program shall be City of Lincoln, which shall act in an administrative capacity.

5.02 Powers and Duties of the Program Administrator

The Program Administrator shall have exclusive responsibility for, and all powers necessary or desirable to carry out, the administration of the Program, and without limitation on the foregoing, shall have complete discretionary power and authority to:

- (a) adopt any rules and regulations it deems desirable for the conduct of its affairs and the administration of the Program;
- (b) take any action it deems necessary or appropriate to comply with any requirements of applicable law with respect to notice and disclosure and the preparation and filing of reports and forms, if necessary;
- (c) construe and interpret the Program and make determinations (including factual determinations) under the provisions of the Program with respect to all rights, benefits, duties and entitlements, including, but not limited to, eligibility for benefits, amounts of benefits payable, and all other matters pertaining to the operation and administration of the Program, all of which determinations are to be made in the Program Administrator's sole discretion;
- (d) appoint or employ persons to assist in the administration of the Program; and
- (e) make any equitable adjustments to correct any error or omission discovered in the administration of the Program.

5.03 Indemnification

If an Employee receives one or more payments or reimbursements under Article IV that are not for eligible expenses, the Employee shall indemnify and reimburse the Employer for any liability that it may incur for failure to withhold federal income taxes, Social Security taxes, or other taxes from such payments or reimbursements.

ARTICLE VI
AMENDMENT AND TERMINATION

City of Lincoln may at any time

- (1) amend the Program contained in this document in any manner it deems advisable,
- (2) terminate or limit the Program contained in this document, or
- (3) terminate or limit the participation in the Program by any Employer, effective as of the date specified in the instrument of amendment or termination, without the consent of any Employer, Eligible Employee or participating Employee.

Such amendments may be retroactive to the extent deemed appropriate by City of Lincoln and may be made in contemplation of, or with specific reference to, a particular transaction, job elimination, reduction in force, or similar event.

City of Lincoln Administrator shall be authorized to adopt on behalf of City of Lincoln all amendments to the Program. Amendments shall be adopted in writing and signed by the City of Lincoln Administrator and shall be effective without further action of City of Lincoln.

ARTICLE VII
MISCELLANEOUS

7.01 Right to Assets

Neither the establishment of the Program nor the payment of benefits under the Program shall be construed as giving any legal or equitable right to any Eligible Employee, former Eligible Employee or participating Employee against City of Lincoln, any Employer or their officers or employees except as expressly provided herein, and all rights under any Program shall be satisfied, if at all, only out of the general assets of the Employer.

7.02 No Inducement, Contract or Guarantee of Employment

The Program does not constitute inducement or consideration for the employment of any Eligible Employee, nor is it a contract between any Employer and Eligible Employee. Participation in the Program shall not give any Eligible Employee any right to continued employment with his Employer, and the Employer retains the right to hire and discharge any Eligible Employee at any time, with or without cause, as if the Program had never been adopted.

7.03 Adoption by Affiliate

Any Affiliate may, with the consent of City of Lincoln, adopt the Program by executing a copy of the Program as a participating Employer, in which case its Eligible Employees shall become entitled to the benefits designated herein.

7.04 Payment of Expenses

City of Lincoln and, to the extent deemed appropriate by the Program Administrator, the participating Employers shall pay all the expenses of administration of the Program, the expenses of the Program Administrator, and any other expenses incurred at the direction of the Program Administrator.

7.05 Governing Law

The Program shall be governed, construed, administered and regulated in all respects under the laws of the state where the Employer is domiciled (without regard to its choice of law provisions), except to the extent preempted by federal law.

7.06 Construction

The Program's headings and subheadings have been inserted for convenience of reference only and must be ignored in any construction of the provisions. If a provision of this Program is illegal or invalid, that illegality or invalidity does not affect other provisions. Any term with an initial capital not expected by capitalization rules is a defined term according to Article II.

7.07 Taxability of Benefits

The Employer makes no guarantee as to the excludability of benefits under this Program from federal, state, or local taxes, and it shall be the Employee's sole responsibility to pay any taxes due as a result of the payment of benefits hereunder.

ADOPTION OF PROGRAM

As evidence of the adoption of the Program, effective _____, by City of Lincoln, this document is executed this _____ day of _____, 20____.

CITY OF LINCOLN

By: _____

Title